72 Ap. 10 Argued with No. 160.
1 Apl 21 Dismissed, Clifford.

11

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~360.~~ 165

A. T. CAPERTON, PLAINTIFF IN ERROR,

vs.

PHILIP BOWYER.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

FILED DECEMBER 9, 1870.

Merrick cites 2 Cr 209 - 13 Pet. 731 Rev. 7 Wh 43
Ashton cites 2 Bush 466
Robinson: Comments on 2 Bush

SUPREME COURT OF THE UNITED STATES.

No. 369.

A. T. CAPERTON, PLAINTIFF IN ERROR,

vs.

PHILIP BOWYER.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

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1 To a justice of the Supreme Court of the United States.

The petition of A. T. Caperton respectfully represents that, in a suit brought in the circuit court of Monroe County, West Virginia, by Philip Bowyer against him, there has been final judgment in the highest court of law of the State in which a decision in the suit could be had, to wit, in the supreme court of appeals in said State, as will be seen by an authenticated transcript of the record, and in said suit is drawn in question the validity of a statute or an authority exercised under the United States, to wit, the 13 section of an act of Congress, entitled An
2 act to suppress insurrection, to punish treason and rebellion, to seize & confiscate the property of rebels, & for other purposes, approved July 17th, 1862, or an authority exercised thereunder, and the decision was against its validity; and in said suit is also drawn in question the validity of a statute or an authority exercised under the State of West Virginia, to wit, the statute of March the 1st, 1865, in Sess. Acts, page 72, & the statute of Nov. 27th, 1866, Sess. Acts, page 92, or an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision is in favour of their validity; and in said suit there is also drawn in
3 question the construction of the 1st clause of the 10th section of the 1st article & of the 2nd section of the 2nd article of the Constitution of the United States, or of a statute or commission held under the United States, and the decision is against the letter, right, privilege, or exemption specially set up or claimed by your petitioner under such clauses of the said Constitution, or under such statute or commission. Wherefore your pe'tioner prays a writ of error by which such judgment may be reëxamined & reversed in the Supreme Court of the United States.

A. T. CAPERTON.

(Indorsed:) A. T. Caperton vs. Phil. Bowyer. Petition.

4 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of appeals of the State of West Virginia, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals of the State of West Virginia before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between A. T. Caperton, plaintiff in error, and Philip Bowyer, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the de-
5 cision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said A. T. Caperton, as by his complaint appears: We,

being willing that error, if any hath been, should be duly corrected, and and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-nine.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Issued 10 March, 1870.
Allowed by

6 (Indorsed:) A. T. Caperton vs. Philip Bowyer. Writ of error.

I certify that a copy of this writ for the defendant in error was lodged in the clerk's office of the supreme court of appeals of West Virginia, this 11th day of March, 1870.

SYLVANUS W. HALL, *Clerk.*

7 The United States of America to Philip Bowyer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals for West Virginia, where A. T. Caperton is plaintiff in error, and you are defendant in error, to show eause, if any there be, why judgement rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this tenth day of March, one thousand eight hundred and seventy.

S. P. CHASE.

Bond taken in the sum of $2,000.

S. P. CHASE.

8 (Indorsed:) A. T. Caperton vs. Philip Bowyer. Citation.

I certify that a copy of this citation was filed in the clerk's office of the supreme court of appeals of West Virginia, the 11th day of March, 1870.

SYLVANUS W. HALL, *Clerk.*

Service of the within citation acknowledged this 2d day of November, 1870.

B. STANTON,
Att'y for Def'd't.

9 Know all men by these presents that we, A. T. Caperton and Hugh Caperton, are held and firmly bound unto Philip Bowyer, in the full and just sum of two thousand dollars, to be paid to the said Philip Bowyer, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 9th day of March, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately at a supreme court of appeals of the State of West Virginia, in a suit depending in said court between A. T. Caperton, appellant, & Philip Bowyer, appellee, judgment was rendered against the said A. T. Caperton, and the said A. T. Caperton having obtained a writ of error and filed a copy thereof in the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Philip Bowyer, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said A. T. Caperton shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—
(Signed) A. T. CAPERTON. [L. S.]
(Signed) HUGH CAPERTON. [L. S.]

Approved by—

S. P. CHASE,
Chief Justice U. States.

10 Hugh Caperton, being sworn, says that he is a resident in the city of Georgetown, D. C., and is worth double the amount of the above bond over and above all his just debts and legal liabilities, exclusive of property exempt from execution.

(Signed) HUGH CAPERTON.

Sworn to & subscribed before me this 10th day of March, 1870.
(Signed) ROBERT WHITE, *J. P.* [SEAL.]

11 Supreme court of appeals of West Virginia, Wheeling.

A. T. CAPERTON
vs.
PHILIP BOWYER.

Petition.

To the honorable the judges of the supreme court of appeals of West Virginia:

The petition of A. T. Caperton respectfully represents—

That he is aggreived by a judgment rendered against him in the circuit court of Monroe, on the 25th day of July, 1867, in the case of Philip Bowyer against him. A transcript of the record is herewith exhibited, and your petitioner assigns the following ,among other errors contained in said record:

1st. The court erred in overruling the defendant's application for a

change of venue. (See pages 12 to 14 for judgment and court's opinion, and pages 31 and 37, both inclusive, for the grounds on which application rested.)

12 2d. In sustaining the plaintiff's demurrer to the 4th, 5th, and 6th special pleas of the defendant.

3d. In overruling the defendant's demurrer to the plaintiff's replication to defendant's first special plea. (Page 16.)

4th. In trying the cause before any issue was made upon the plaintiff's replication to the defendant's 1st special plea.

5th. In excluding from the jury the defendant's pardon from the President of the United States, offered under the general issue.

6th. In overruling the defendant's motion for a new trial. (See exception No. 2, p. 24.)

7th. In refusing the instructions in relation to the statute of limitation. The issue made upon the pleas of the statute of limitations involved the question alone as to whether the cause of action arose more than one year before the institution of this suit. The act of March, 1865, could not be made to apply to any case when the bar was complete, without giving it a retroactive operation, which is never allowed by the courts, unless it appears beyond doubt that it was the intention to act retrospectively.

8th. In refusing to allow the pardon of the defendant to go in evidence in mitigation of damages.

9th. The judgment should have been arrested on the removal of the court to a different place from that fixed under the law, was illegal.

For these and other errors to be hereafter assigned, your petitioner prays that said judgment be superseded and reversed.

A. T. CAPERTON.

I, Benj. H. Smith, an attorney practising in the court of appeals, do hereby certify that I have examined the foregoing record, and am of opinion there is error in said record sufficient to review and reverse the same.

BENJ. H. SMITH.

OCTOBER 3D, 1867.

13 Supersedeas allowed as prayed for, upon the petitioner giving bond and security, as required by law, in the penalty of $1,700, conditioned according to law.

J. H. BROWN.

OCTOBER 4, 1867.

To the CLERK of the supreme court of appeals.

14 RECORD.

STATE OF WEST VIRGINIA:

Pleas before the circuit court of Monroe County, on the 25th day of July, 1867, and in the 5th year of the State.

Be it remembered that, heretofore, to wit, on the 11th day of May, 1866, came Philip Bowyer, by his attorney, and sued out of the clerk's office of said county of Monroe, a summons against Allen T. Caperton, which summons, and the officer's return thereon, is in the words and figures following, to wit:

The State of West Virginia to the sheriff of Monroe County, greeting:

We command you that you summon Allen T. Caperton, if he be found

in your bailiwick, to appear before the judge of our circuit court for Monroe County, at rules, to be held in the clerk's office of said county on the first Monday in June next, to answer Phillip Bowyer of a plea of trespass on the case, illegal arrest, and false imprisonment; damage, $10,000. And have then there this writ.

Witness James E. Howell, clerk of our said court, at the court-house of said county, on the 11th day of May, 1866, and in the third year of the State.

J. E. HOWELL, *Clerk.*

Return.

Executed May 28th, by serving office copy to defendant, A. T. Caperton.

L. CALLAWAY, *D. S.*
For L. Ballard, S. M. C.

15 And at another day, to wit, at rules, held in the clerk's office of the circuit court of Monroe County, on the first Monday in June, 1866, this day came the defendant, by his attorney, and a day thereupon is given to the plaintiff until the next rules, to file his declaration. And the same day is given the said defendant there, &c.

At which day, to wit, at rules, held in the clerk's office of said court, on the first Monday in July, 1866, the plaintiff having been ruled to file his declaration, and failing so to do, on motion of the defendant, by his attorney, it is ordered that the said plaintiff be nonsuited, and pay to the defendants five dollars, according to law, besides the costs by the defendant about their defense expended.

And at another day, to wit, at a circuit court continued and held for the county of Monroe, at the court-house thereof, on Monday, the 6th day of August, 1866.

PHILIP BOWYER
against
A. T. CAPERTON.

On motion of the plaintiff, by his counsel, who filed his declaration, it is ordered that the nonsuit entered at the rules in this case, for want of a declaration, be set aside, and that this cause be reinstated on the rule docket; to which order, setting aside the nonsuit and reinstating this cause on the rule docket, the defendant, by his counsel, excepts, because the order setting aside the nonsuit does not state that the penalty of five dollars and costs, incurred thereby, are not intended to be set aside also; which exceptions are ordered to be made a part of the record.

The declaration filed as above, is in the words and figures following, to wit:

STATE OF WEST VIRGINIA, *Monroe County, to wit:*

Circuit court of Monroe County.

16 Philip Bowyer, by C. Newlin, his attorney, complains of Allen T. Caperton, who has been summoned, &c., of a plea of trespass on

the case, for that the said defendant, on the 29th day of June, 1862, at the county of Monroe aforesaid, in the then State of Virginia, and the present State of West Virginia, with force and arms seized, took, drove, forced, carried, and transported the plaintiff, and procured, caused, directed, ordered and instigated others to seize, take, drive, force, carry and transport the plaintiff from his home in said county of Monroe, to Union, in the aforesaid county, and there imprisoned and held in confinement the plaintiff, and procured, caused, directed, and instigated others to imprison and hold in confinement the plaintiff, at said Union, forcibly, wrongfully, and against the plaintiff's will, for a long space of time, to wit, for twenty-four days, whereby the plaintiff was separated from his home and family, and was deprived of his liberty, and incarcerated in a loathsome and unhealthy dungeon, and was subjected to great danger and to many hardships, and seriously injured and impaired in health, and put in great pain and distress, both of body and mind, and by reason whereof and whereby the plaintiff was greatly injured and damnified; and other wrongs to the plaintiff said defendant then and there did, and procured, caused, ordered, and instigated and directed others to do against the peace, and to the plaintiff's damage ten thousand dollars; and therefore he brings suit.

And at another day, to wit, at rules held in the clerk's office of the circuit court of Monroe County, on the first Monday in September, 1866,

On motion of the plaintiff, (who filed his declaration at July term, 1866,) it was ordered that judgment be entered for said plaintiff against the defendant for what damages he ought to recover, unless the defendant shall appear at the next rules and answer the plaintiff's action.

17 And at which day, to wit, at rules held in the clerk's office of said court on the first Monday in October, 1866, this day came the defendant, by his attorney, and filed a demurrer to the plaintiff's declaration, plead the general issue, and also filed six special pleas in writing, and thereupon a day is given the plaintiff, until the next rules, to join in the said demurrer, also in the general issue, and reply to said special pleas, and the same day is given the defendant there, &c.

Demurrer and pleas.

In the circuit court of Monroe County, West Virginia.

PHILIP BOWYER, PLAINTIFF,
against
ALLEN T. CAPERTON, DEFENDANT.

1st. The defendant says the declaration is not sufficient in law.

2d. The defendant says he is not guilty of the supposed grievances laid to his charge, or any or either of them, or any part thereof, in manner and form as the plaintiff hath thereof complained against him. And of this the said defendant puts himself upon the country.

3d. The defendant says that this action was not brought within one year next after the right to bring the same accrued, and this the said defendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

4th. The defendant says that this action was not brought within two years next after the right to bring the same accrued, and this the said defendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

5th. The defendant says that more than two years had elapsed after the right to bring this action accrued, and before the first (1st) day of March, 1865, when an act relative to the statute of limitations was passed by the legislature of West Virginia, and this the said de-
18 fendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

6th. The defendant says that, at the time of the supposed grievances laid to this defendant's charge, the plaintiff and this defendant were citizens of the State of Virginia, and resided in that State, and the whole time of limitation prescribed for this action by the law of the State of Virginia had run while this defendant resided in that State, and before the first day of March, 1865, when an act in relation to the statute of limitations was passed by the legislature of West Virginia, and this the said defendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

7th. The defendant says that, before the time of the supposed grievances laid to his charge, he had, on oath made in conformity with the law long existing in the Commonwealth of Virginia, declared himself a citizen of the said Commonwealth, and solemnly sworn that he would be faithful and true to the said Commonwealth, and would support the constitution thereof so long as he continued to be a citizen of the same, and until and at and after the time of the said supposed grievances he continued to be a citizen of the same, and before and at the time of the said supposed grievances the said Commonwealth was engaged in actual war, and an army consisting of a large number, to wit, thousand soldiers, was raised within the then territory of the said Commonwealth, for the safeguard and defence of the same against those who then, by *those then* acting at the city of Richmond, in said Commonwealth, as the authorities of said Commonwealth, were deemed the enemies thereof; and during the time that the said army was in actual service within said territory for such safeguard and defence, and while the then actual authorities of said Commonwealth and those in the same confederacy therewith were not only belligerents, but recognized as such by
19 the Government of the United States, Gen. H. Heth, the general and commander of troops forming part of said army in actual service, did, under the authority of the executive power then in fact exercised over said Commonwealth and over those in the same confederacy therewith, appoint this defendant provost marshal of the county of Monroe; and while this defendant was such provost marshal under said appointment, the plaintiff was, without any special order from or instigation of this defendant, taken and imprisoned upon a charge of harboring deserters, and was, by this defendant, discharged from imprisonment upon his giving surety for his good behavior; and all the supposed grievances whereof the plaintiff has complained, so far as this defendant did or procured, caused, directed, ordered, instigated others to do the same, were acts done while this defendant was such provost marshal under said appointment, and done in what was then in fact the territory of said Commonwealth, and done in pursuance of the executive authority, which then in fact governed in said Commonwealth,

and in accordance with such laws, rules, and regulations as then in fact prevailed therein, and this the said defendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

8th. And the defendant, for further plea, says that Andrew Johnson, President of the United States of America, at the city of Washington, on the 7th day of September, 1865, and of the independence of the United States the ninetieth, by an instrument of writing, whereunto he signed his name and caused the seal of the United States to be affixed, after reciting that the defendant, by taking part in the late rebellion against the Government of the United States, had made himself liable to heavy pains and penalties, and the circumstances of his case render him a proper object of executive clemency, did grant to this defendant a full pardon and amnesty for all offenses by him committed, arising from participation, direct or implied, in the said rebellion; and
20 the defendant took the oath prescribed in the proclamation of the President, dated May the 29th, 1865, and the defendant duly notified the Secretary of State, in writing, that he had received and accepted the said pardon. And the defendant further says that all the grievances complained of in the declaration are acts arising from participation, direct and implied, in the said rebellion, and this the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

And at another day, to wit, at rules held in the clerk's office of Monroe County circuit court, on the first Monday in November, 1866:

This day came the plaintiff, by his attorney, and filed his joinder to the defendant's demurrer, and put himself upon the country as to the plea of not guilty, filed a replication to defendant's first special plea, to which the defendant filed a demurrer, and a day is thereupon given the said plaintiff until the next rules, to rejoin in said demurrer, and the same day is given the said defendant there, &c.; and the said plaintiff filed a replication to the defendant's second and third special pleas, and issue thereon is joined; the plaintiff also filed demurs to the defendant's fourth, fifth, and sixth special pleas, and the defendant joins in said demurrers.

Plaintiff's joinder, &c.

PHILIP BOWYER
vs.
ALLEN T. CAPERTON.

Joinder in demurrer, replications, and demurs to pleas.

1st. The plaintiff as to the demurrer of the defendant, says that the declaration is sufficient in law.

2d. The plaintiff, as to the defendant's plea of not guilty, and whereof he hath put himself upon the country, doth the like.

21 3d. The plaintiff, for replication to the first special plea of the defendant, says that he ought not to be barred from having and maintaining his aforesaid action, because he says that his said action is not barred in manner and form as the defendant, in his said plea, has alleged, and of this the plaintiff puts himself upon the country.

4th. The plaintiff, for replication to the second special plea of the defendant, says that he ought not to be barred from having and maintaining his aforesaid action, because he says that his said action is not

barred in manner and form as the defendant, in his said plea, has alleged, and of this the plaintiff puts himself upon the country.

5th. The plaintiff, for replication to the third special plea of the defendant, says that he ought not to be barred from having and maintaining his aforesaid action, because he says that his said action is not barred in manner and form as the defendant, in his said plea, has alleged, and of this the plaintiff puts himself upon the country.

6th. The plaintiff demurs to the fourth special plea of the defendant, because the same is not sufficient in law.

7th. The plaintiff demurs to the fifth special plea of the defendant, because the same is not sufficient in law.

8th. The plaintiff demurs to the sixth special plea of the defendant, because the same is not sufficient in law.

Demurrer of defendant to plaintiff's replication to defendant's first special plea.

CAPERTON, DEFENDANT, *ads.* PHILIP BOWYER, PLAINTIFF. } In trespass.

The defendant demurs to the replication of the plaintiff (No. 3) to the defendant's first special plea, because he says the said replication is not sufficient in law.

22 And at another day, to wit, at rules held in the clerk's office of said court on the first Monday in December, 1866: This day came the plaintiff, by his attorney, and the said plaintiff to the demurrer of the defendant to the plaintiff's replication to defendant's first special plea, rejoins generally, and puts himself upon the country; and the defendant likewise.

And at another day, to wit, at a circuit court continued and held for the county of Monroe, at the court-house thereof, on the 26th day of April, 1867.

PHILIP BOWYER *vs.* ALLEN T. CAPERTON. } Tr. on the case.

This cause was continued until the next term.

And at another day, to wit, at a circuit court continued and held for the county of Monroe, at the Salt Sulphur Spring', according to a special order of the court, made on yesterday the 23d day of July, 1867, the court sat pursuant to adjournment.

PHILIP BOWYER *vs.* A. T. CAPERTON. } Tr. on the case.

The defendant, A. T. Caperton, by his counsel, this day moved the court for a change of venue in this cause, founded upon the petition of the defendant, and the affidavits filed by him, and counter affidavits filed by plaintiff accompanying same in the case of William Ballard's administrator against said Caperton, which is agreed shall be considered

as a part of the record of this case, also. Whereupon the court, upon mature consideration of said petition, and for the same reason assigned by the court and delivered in its written opinion in the case of W'm Ballard's administrator against said Caperton, which is also made a part of the record in this suit, doth overrule the said motion, and refuse to change the venue to another county; to which refusal of the
23 court to change the venue, the defendant, by his counsel, excepts, and his exceptions are made a part of the record.

Said petition and affidavits are made a part of this order.

The opinion of the court above referred to is in the words and figures following, to wit:

Applications for a change of venue are addressed to the sound discretion of the court. The court upon consideration of the affidavits and counter affidavits filed, cannot come to the conclusion that impartial justice cannot be done to the defendant by a jury of this county, especially as the court in every instance, where applied to by the said defendant, has directed a special jury to be empanneled in all his cases heretofore tried at this term under the 25th section code of 1860, p. 691, and in all such cases subjected each juror to the sifting test propounded by section 21st, I. D. The court has no reason from the character of the verdicts already rendered against the defendant in other causes at this term, or otherwise, to believe that he cannot obtain a fair and impartial trial of this cause in this county, and that the qualified jurors of this county, when interrogated as aforesaid by the court, would swear falsely. Besides the plaintiffs in these trespass-suits in this court, are generally, as in this case, men of limited means, and would be subjected to great inconvenience and expense by a removal of their causes to another county. Besides, too, in consequence of the time fixed by law for holding the courts in the different counties of this circuit, this court which is now setting, and can continue to set according to law if necessary, until the first of next September, is the only court in this circuit in which there could be time enough for the trial of the many and protracted trespass-cases on this docket. Besides, too, neither in Mercer nor McDowell is there a court-house now established of sufficient accommodation even for the business of those counties; and Greenbrier and Pocahontas, (the only other two counties in this circuit,) the
24 time now allowed by law for holding courts there is not half enough for the business which has already accumulated in those counties, and a change of venue to either of those counties would operate, in the opinion of the court, as an indefinite postponement of the trial of this cause. Motion for change of venue is, therefore, overruled.

N. HARRISON.

This day came the parties, by their attorneys, and the defendant's demurrer to the plaintiff's declaration, on which issue was joined, being argued, it is considered by the court that the said demurrer be overruled, and that the declaration is sufficient in law; and the plaintiff's demurrer to the fourth, fifth, and sixth special pleas of the defendant, on which issue was ordered, being argued, it is considered by the court that the said demurrer be sustained, and that the said fourth, fifth, and sixth special pleas are not sufficient in law; and the defendant's demurrer to the replication of the plaintiff (No. 3) to the defendant's first special plea, on which issue was joined, being argued, it is considered

by the court that the said demurrer be overruled, and that the said replication is sufficient in law.

Thereupon came a jury, to wit, Jacob Grimmet, William Mann, Henry O. Smith, David Bragg, William C. Ballard, Archibald Calis, Jacob Neil, James P. Rollyson, John Reynolds, William E. Rutledge, James Buckland, and James Brown, who, being elected, tried, and sworn to try the issue joined, and having fully heard the evidence and arguments of counsel, were sent out of court to consult of their verdict. After some time returned into court, and not having agreed in a verdict, they were placed in charge of the sheriff until to-morrow morning at 10 o'clock.

And at another day, to wit, at a circuit court continued and held for the county of Monroe, at the Salt Sulphur Springs, on Wednesday, the 24th day of July, 1867 :

25 PHILIP BOWYER } In trespass.
vs.
A. T. CAPERTON. }

This day came again the parties, by their attorneys, and the jury sworn to try the issues in this cause appeared in court according to their adjournment, and were again sent out of court to consult of their verdict, and after some time returned, and upon their oath do say :

"We, the jury, find for the plaintiff upon all the issues joined in this case, and upon the issue joined upon the plea of not guilty, we further find the defendant guilty, and assess the plaintiff's damages against the defendant at eight hundred and thirty-three dollars."

Whereupon the defendant, by his counsel, moved the court to set aside the verdict and grant him a new trial; which motion the court takes time until to-morrow to consider thereof.

And at another day, to wit, at a circuit court continued and held for the county of Monroe, at the Salt Sulphur Springs, on Thursday, the 25th day of July, 1867.

PHILIP BOWYER } In trespass.
vs.
A. T. CAPERTON. }

This day came again the parties, by their attorneys, and the court having maturely considered the motion for a new trial, doth overrule said motion. Therefore, it is considered by the court that the plaintiff recover against the defendant the said sum $833, his damages by the jury on yesterday assessed, and his costs by him about his suit in this behalf expended.

Upon the trial of this cause, the defendant, by his counsel, tendered sundry bills of exceptions, which were signed and sealed by the court, and ordered to be made a part of the record in this cause.

26 And at another day, to wit, at a circuit court continued and held for the county of Monroe, at the Salt Sulphur Springs, on Wednesday, the 31st day of July, 1867.

PHILIP BOWYER
vs. } In trespass.
A. T. CAPERTON.

Prior to the empannelling of the jury in this case, the defendant, by his counsel, moved the court for a change of venue in this cause, which motion was founded upon the petition of the defendant, and the affidavits filed therewith, in the case of William Ballard's administrator vs. the said defendant, which said petition and affidavits, and also all the counter affidavits filed in that case in opposition to said motion, by consent of the parties, by their counsel, are to be considered as the evidence filed in this cause; also, both in support and in opposition to said motion. The court, for reasons assigned in the case of W'm Ballard's administrator vs. said defendant, doth overrule the motion in this case for a change of venue. The defendant excepted to the court's opinion overruling the same, and his exception thereto is ordered to be made a part of the record in this case.

This day came the defendant, by his attorney, who states that he thinks himself aggrieved by the judgment rendered in this case at the present term, and that he desires to appeal therefrom to the supreme court of appeals of the State of West Virginia, and that he intends to apply for an appeal pursuant to the provisions of chapter 182, code of Virginia, section 4th, p. 745. The court doth fix ninety days as the time within which the defendant may apply for such appeal, and doth order that execution of the said judgment be suspended for that time, provided the said defendant, or some responsible person for him, shall enter into bond, with sufficient security, in the penalty of $1,033, with condition according to law. Whereupon the said A. T. Caperton entered into such bond with J. M. Byrnside, his security, and execution of the judgment is suspended as aforesaid.

27 *Defendant's bill of exceptions, No.* 1.

On the trial of this cause, after evidence had been introduced tending to show that the defendant, in the year 1862, committed the grievances in the plaintiff's declaration complained of, and that at the time he so committed them he was confederate provost marshal of the county of Monroe, appointed as such by Gen. Heth, then in command of the confederate forces in this department, upon the recommendation of the county court of Monroe, then a court in rebellion against the United States, made at the instance of said Heth himself, the said defendant at the time being over the age of conscription, and not in the military service of the confederacy, and after evidence had been offered tending to show that the said grievances *was* committed by the said defendant in his character as confederate provost marshal as aforesaid, and at that time by a proclamation of Jefferson Davis, confederate martial law was then prevailing in the county of Monroe; and that the said county was at that time in the actual occupation of the confederate military forces, both in mitigation of damages and as justification of the acts complained of, the defendant, by his counsel, offered a pardon granted to him by the President of the United States, on the day of , 1865, in words and figures following, to wit:

Andrew Johnson, President of the United States of America, to all to whom these presents shall come greeting:

Whereas A. T. Caperton, of West Virginia, by taking part in the late

rebellion against the Government of the United States, has made himself liable to heavy pains and penalties; and whereas the circumstances of his case render him a proper object of executive clemency—

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, in consideration of the premises, divers
28 other good and sufficient reasons me thereunto moving, do hereby grant to the said A. T. Caperton a full pardon and amnesty for all offenses by him committed, arising from participation, direct or implied, in the said rebellion, conditioned as follows:

1st. This pardon to be of no effect until the said A. T. Caperton shall take the oath prescribed in the proclamation of the President, dated May 29th, 1865.

2d. To be void and of no effect if the said A. T. Caperton shall, hereafter, at any time, acquire any property whatever in slaves, or make use of slave labor.

3d. That the said A. T. Caperton first pay all costs which may have accrued in any proceeding instituted or pending against his person or property before the date of the acceptance of this warrant.

4th. That the said A. T. Caperton shall not, by virtue of this warrant, claim any property, or the proceeds of any property, that has been sold by the order, judgment, or decree of a court, under the confiscation laws of the United States.

5th. That the said A. T. Caperton shall notify the Secretary of State, in writing, that he has received and accepted the foregoing pardon.

In testimony whereof I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington, this seventh day of September, A. D. 1865, and of the independence of the United States the ninetieth.

ANDREW JOHNSON.

By the President:

[SEAL.] WILL. H. SEWARD,
Secretary of State.

29 UNITED STATES OF AMERICA,
Department of State:

To all whom these presents shall come, greeting:

I certify that the paper hereto annexed is a true copy of the original on file in this Department.

In testimony whereof I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this eleventh day of September, A. D. 1865, and of the independence of the United States of America the ninetieth.

[SEAL OF DEPARTMENT OF STATE.] WILL. H. SEWARD.

WASHINGTON CITY, *September 11th*, 1865,

Hon. WILLIAM H. SEWARD, *Secretary of State.*

SIR: I this day received the pardon of the President of the U. S., and accept the same, with the conditions therein expressed.

Very respectfully, your ob't serv't,

T. A. CAPERTON.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, A. T. Caperton, of Monroe County, West Virginia, do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the Union of States thereunder; and that I will, in like manner, abide by and faithfully support all laws and proclamations which have been made during the existing rebellion, with reference to the emancipation of slaves; so help me God.

T. A. CAPERTON.

30 Sworn to and subscribed before me this the 12th day of September, A. D. 1865.

[NOTARIAL SEAL.] N. CALLAN,
Notary Public.

I certify the above is a true copy of an original oath, sworn to and subscribed before me this 12th day of September, A. D. 1865.

[NOTARIAL SEAL.] N. CALLAN,
Notary Public.

[5-ct. stamp.]

To the introduction of which said pardon for the purpose aforesaid, the plaintiff, by his counsel, objected, and moved the court to exclude the same, which motion the court sustained, and excluded the said pardon as evidence; to which opinion of the court the defendant, by his counsel, excepted, and his exceptions are signed, sealed, and made a part of the record.

N. HARRISON. [SEAL.]

Defendant's bill of exceptions, No. 2.

On the trial of this cause the following facts were proved by the plaintiff, to wit: That, on the 29th of June, 1862, by a mit'imus or warrant, signed by T. F. Parke, the confederate ass't provost marshal of the county of Monroe, and addressed to W'm Connell, confederate jailor of the county of Monroe, the plaintiff was committed to the jail of the said county, and that at the time the defendant, A. T. Caperton,
31 who was not in the military service of the confederacy, and was over its conscript age, was confederate provost marshal of the said county, and that the said T. F. Parke was his deputy or ass't provost marshal, and subordinate to him; and that the plaintiff was kept in jail from that time until the 22d of July, 1862, when, by warrant signed by the defendant, as provost marshal, by order of the colonel commanding the confederate forces then at the Salt Sulphur Springs, in the said county, the plaintiff was released from jail upon the condition of his taking the oath of allegiance to the southern confederacy, and upon his further giving bond and security, in the penalty of $1,000, to be a true and loyal citizen to the said confederacy. The said mit'imus and warrant, or order of release, are in the words and figures following, to wit:

OFFICE PROVOST MARSHAL,
Union, June 29th, 1862.

To W'M CONNELL, *Jailor:*

You will receive the prisoner, Philip Bowyer, and keep him in close confinement until further dealt with.

THO'S F. PARKE,
Ass't Provost Marshal.

PROVOST MARSHAL' OFFICE,
Union, July 22d, 1862.

Philip Bowyer, having taken the oath of fidelity to the Confederate States, and to the State of Virginia, and having also entered into a recognizance to demean himself as a true and loyal citizen of the Confederate States, is this day discharged from custody by order of the colonel commanding.

A. T. CAPERTON,
Provost Marshal.

It was further proved for the plaintiff that he was thus confined in the said jail for the period of twenty-four days; that during a portion of said confinement there were eight persons in the same room
32 at the same time; that the accommodations therein were bad, and food scarce; that once, during his said confinement, the defendant came to the said jail, and stated to the plaintiff's son, who was shown to have been confined in jail with him, that he would let him out if he would give bond, conditioned upon his allegiance to the confederate government for $500, and go into service of the same; and that he would let the plaintiff out if he would give a similar bond for $1,000, and take an oath of allegiance to the Confederate States, and that he would otherwise have to stay in jail; and that the plaintiff gave the bond, and took the oath as required, and was released as aforesaid on the same day that this conversation occurred, and that the plaintiff, at that time, was over the age of the conscription, and not in the military service of the confederacy. This being all the evidence for the plaintiff, the defendant then introduced and proved in evidence the following facts, to wit: That the plaintiff was arrested by Captain Bouldin, on the occasion referred to in the declaration, at a picket-post six miles north of Union, in said county, which post was in charge of Capt. Bouldin, of the confederate cavalry, then attached to the regiment of Col. John McCausland, a confederate officer, whose headquarters were then established at the Salt Sulphur Springs, in the said county; that the plaintiff was arrested by said Bouldin upon a charge of harboring deserters and giving information to the forces of the United States; that it was the habit of officers at the confederate military headquarters in Monroe to send civilians, who were arrested for disloyalty to the South, to jail in Union; that the plaintiff stated, on one occasion, that he would not have brought suit against the defendant, but that he had compelled him to give a trust-deed on his property before he would let him out of jail. It was further proved for the defendant, that the plaintiff himself admitted, in conversation with one of the witnesses, that he had been arrested by some of the confederate cavalry,
33 brought to confederate headquarters at the Salt Sulphur Springs, sent thence by Col. McCausland to the defendant, and by the said defendant put in jail, and that all he blamed the defendant for was that he compelled him to give a deed of trust before he would release him. It was further proved for the defendant that, whilst the plaintiff was in jail, he, as provost marshal, helped him, at the request of *of* the plaintiff, as his friend, to get a horse from the confederate cavalry, which they had taken from him, and that the defendant did cause said horse to be restored to his family. It was further proved for the defendant that, whilst Col. McCauslin was in command as aforesaid at the Salt Sulphur, that he used the jail of Monroe County, at Union, as well as the guard-house at his regiment, encamped about a mile from Union, for the confinement of deserters and other prisoners; that it

was the practice of the confederate officer in command at that time to send civil prisoners assigned to the Monroe jail, to the provost marshal, by whom they were committed to jail; that the defendant, at the time, was acting provost marshal of Monroe County, and T. F. Park was his acting deputy, and subordinate to him, and that the colonel commanding frequently sent his orders direct to said Park, without reference to the defendant, and that the defendant, at that time, was over the age of conscription, and not in the military service of the confederacy, and that martial law, by a proclamation of Jefferson Davis, dated March 29th, 1862, prevailed in the said county, and that the said county was, at that time, in the actual occupation of a portion of the confederate forces. And this being all the evidence upon both sides, the jury, after hearing the arguments of counsel, and receiving the charge of the court, found a verdict in favor of plaintiff for $, and were discharged by the court:

Thereupon the defendant, by his counsel, moved the court to set aside the verdict, and grant a new trial, because the verdict was con-
34 trary to the law and the evidence; which motion the court, after taking time to consider thereof, overruled, and refused to disturb the verdict of the jury; to which opinion of the court the defendant, by his counsel, excepted, and his exceptions are signed, sealed, and made a part of the record.

N. HARRISON. [SEAL.]

Defendant's bill of exceptions, No. 3.

This day came the defendant, by his counsel, and moved the court to arrest the judgment in this case, because on the day of July, 1867, and whilst this court was then in session at the court-house of the county of Monroe, in the town of Union, the court, for reasons assigned in the said order, made an order, which is referred to as a part of this bill of exceptions, which order is in the words and figures following, to wit:

The court-house of this county being in bad condition, and requiring immediate repairs, and the workmen employed to make the said repairs being now engaged in making the same, and it appearing to the court that, during the progress of the said repairs, the court-house will not be in condition to be occupied, it is therefore ordered that the remainder of the present term of this court shall be continued and held at the Salt Sulphur Springs, in the county of Monroe, and that this court be adjourned until ten o'clock to-morrow morning, at the said springs, directing that the remainder of the present term of this court should be held at the Salt Sulphur Springs, in the county of Monroe, instead of at the court-house, and accordingly adjourned the court to be held at the said springs, which are three miles distant from the town of Union, where it was held when this case was tried.

The defendant moved the court to arrest the judgment in this case, because the court had no authority to make such change in the place of holding its court; but the court, having no doubt that under the statute of Code of 1860, sec. 8, page 685, that it had this right, and that for reasons stated in said order *that* it was properly exercised, over-
35 ruled the said motion in arrest of judgment; to which the defendant, by his counsel, excepted, and his exceptions are signed, sealed, and made a part of the record.

N. HARRISON. [SEAL.]

Petition of defendant, Caperton, referred to and made a part of the order of July 23d, 1867. (*See page* 14.)

To the Hon. N. Harrison, judge of the circuit court of Monroe:

The petition of A. T. Caperton respectfully represents that there are now on the docket for trial at this term of the court five suits against him for alleged trespasses, viz, one by Philip Bowyer, one by Nicholas Martin, one by Jno. A. Brown against him and others, and two by W'm Ballard's administrator.

Your petitioner is satisfied that he cannot have a fair and impartial trial of said suits in this county, and he asks a change of venue for the following reasons:

1st. That during the late war he acted as confederate provost marshal for the county of Monroe, and that all the suits above mentioned arose out of his acts as such officer, and that on account of the duties which devolved on him as such officer, and which he performed, a very great and deep-seated prejudice was engendered against him among those who now make up the competent jurors for said county.

2d. That during the present term of the court four suits against him have been tried, involving questions growing out of the exercise of his office aforesaid, almost identically similar to those involved in the suits yet to be tried, and the results of said trials were such as not only to satisfy your petitioner, but a large number of impartial persons, that prejudice and ill-will must have influenced the minds of most of the jurors who rendered verdicts in those cases.

36 3d. That the various plaintiffs in the suits already tried, and those to be tried, have large family connections in said county; that heretofore, in almost every case that has been tried, the juries have been composed in part of persons who were the relatives of those who had similar suits, either against your petitioner or others, and your petitioner is apprehensive that such will be the case in the suits hereafter to be tried.

4th. That the president of the board of supervisors who assisted in drawing the annual list from which the juries were to be selected, has a similar suit against another party now pending in this court.

5th. That the sheriff of this county, who has the selection of any special jury, has similar suits pending in this court, and is related to several parties who have had and now have similar suits in this court.

6th. That there are now some twenty-four suits, including those against your petitioner, for trespasses, growing out of similar transactions, which have contributed to awaken and intensify the feelings of prejudice before referred to, and which connect with them such a number of the relatives of the plaintiffs as to render the circle of unbiased and unprejudiced men quite small. In consequence of the requirement of the test oath, the number of competent jurors in the county, compared with the number of male citizens over the age of twenty-one years, does not exceed one-eight' of the same, and consequently the range of selection is quite limited.

Your petitioner refers to the affidavits accompanying this petition, which he prays may be read, and for the reasons herein set forth he prays that the said causes may be transferred to some other county within this circuit for trial.

All of which is respectfully submitted.

A. T. CAPERTON.

Sworn to in open court, July 17th, 1867.

LEWIS CALLAWAY, *Clerk.*

37 *Affidavits filed by defendant and referred to, and made a part of the order of July 23d.* *(See page 14.)*

The undersigned having had full opportunities for ascertaining the condition of the public mind with reference to certain trespass suits brought by various persons against A. T. Caperton, esq., have no hesitation in declaring it as our firm belief that, owing to prejudices excited against said Caperton by his having exercised the office of provost-marshal in this county during the war, among that class men who now make the qualified jurors, he cannot obtain a fair and impartial trial of said causes by any jury likely to be selected in this county.

M. McDANIEL.
A. H. JOHNSTON.
SAM'L R. HOUSTON.
B. F. STEELE.
J. M. ROWAN.
JNO. W. LANIUS.
JOS. ZOLL.
S. J. WARREN.
THO'S F. PARKE.
GEORGE W. CLARK.
JA'S A. SHANKLIN.
WILLIAM C. BABER.
WILLIAM SMITH.
JAMES G. KEADLE.
R. R. HOUSTON.
JOHN McCREERY.
J. L. LYNCH.
WILLIAM F. SNYDER.
E. JAMESON.
JACOB ZOLL.

J. W. DAVIS.

Sworn to before me this 17th July, 1867.

LEWIS CALLAWAY,
Clk Monroe Co. Cir. Court.

38 The undersigned members of the bar, practising in the circuit court of Monroe, have seen much and have heard much of certain trespass suits which are now being prosecuted in said court against A. T. Caperton, esq., by various persons, have no hesitation in affirming, as our decided belief, that, in the present condition of things, it is almost impossible for him to obtain a fair and impartial trial on account of the prejudice and bias of the qualified jurors of this county.

FRANK HEREFORD.
C. A. SPERRY.
A. G. TEBBETTS.

Sworn to in open court July 19th, 1867.

LEWIS CALLAWAY,
Clerk.

Affidavits filed by plaintiff, and referred to and made a part of the order of July 23d, 1867. *(See page 14.)*

The undersigned, citizens of the county of Monroe, having learned that an application has been made to the Hon. N. Harrison, judge of the circuit court, by one Allen T. Caperton, to change the venue in certain causes in which the said A. T. Caperton is defendant, for various reasons assigned by the said Caperton in a petition presented by him, in which, among other things, the said Caperton has sworn that he believes such bias and prejudice exists against him amongst the registered voters and competent jurors of the said county as would prevent his receiving justice in said suits; and believing that said affidavit and petition contains an unwarranted reflection upon the character and integ-

rity of the registered voters and competent jurors of the said county, upon their solemn oaths, say that they believe no such bias or pre-
39 judice exists among the said jurors or voters against the said Caperton as will prevent their doing him justice upon the evidence adduced in the causes before referred to.

C. H. HARVEY.	HIRAM MCHOGSHEAD.
ARCHIBALD CALES.	JAMES BUCKLAND.
JORDAN GRIMET.	JOSIAH BEASLEY.
DAVID BRAGG.	H. O. SMITH.
JA'S P. ROLLYSON.	JOHN HUNTER.
JACOB GRIMET.	G. W. BRUFFY.

SAM'L DEHART.

Subscribed and sworn to before me, July 17th and 18th, 1867.
LEWIS CALLAWAY, *Clerk.*

Proclamation referred to in bill of exceptions No. —.

WAR DEPARTMENT, ADJ'T AND INSPECTOR GENERAL'S OFFICE,
Richmond, March 29, 1862.

[General Orders No. 18.]

I. The following proclamation is published for the information of al concerned:

PROCLAMATION.

By virtue of the power vested in me by law to declare the suspension of the privilege of the writ of habeas corpus,

I, Jefferson Davis, president of the Confederate States of America, do proclaim that martial law is hereby extended over the counties of Greenbrier, Pocahontas, Bath, Alleghany, Monroe, Mercer, Raleigh, Fayette, Nicholas, and Randolph; and I do proclaim the suspension of all civil jurisdiction (with the exception of that enabling the courts to take cognizance of the probate of wills, the administration of the estates of deceased persons, the qualifications of guardians to enter decrees
40 and orders for the partition and sale of property, to make orders concerning roads and bridges, to assess county levies, and to order the payment of county dues,) and the suspension of the privilege of the writ of habeas corpus in the counties aforesaid.

In faith whereof, I have hereunto signed my name and set my seal this 29th day of March, in the year one thousand eight hundred and sixty-two.

[SEAL.] (Signed) JEFFERSON DAVIS.

II. Brigadier General Henry Heth is charged with the execution of the foregoing proclamation. He will forthwith establish an efficient military police, and will enforce the following orders:

All distillation of spirituous liquors is positively prohibited and distilleries will forthwith be closed. The sale of spirituous liquors of any kind is also prohibited, and establishments for the sale thereof will be closed.

III. All persons infringing the above prohibition will suffer such punishment as shall be ordered by the sentence of a court martial, provided that no sentence to hard labor for more than one month shall be

inflicted by the sentence of a regimental court martial, as directed by the 37th article of war.

By command of the secretary of war.

(Signed) S. COOPER,
Adjutant and Inspector General.

STATE OF WEST VIRGINIA,
Monroe County, to wit:

I, Lewis Callaway, clerk of Monroe County circuit court, certify that the foregoing is a true transcript from the records of my office.

LEWIS CALLAWAY, *Clerk.*

Fee of clerk of circuit court for this record, $10 00.

41 PHILIP BOWYER } In trespass.
vs.
A. T. CAPERTON. }

Be it remembered that on the trial of this cause, and after the evidence was closed, the defendant, by his counsel, moved the court to instruct the jury as follows:

1st. If the jury believe that this action was not brought within one year next before the right to bring the same accrued the verdict should be for the defendant.

2d. That if the jury believe that the right to bring this action accrued more than one year before the first day of March, 1865, and that this action was not brought until after the first day of March, 1865, the verdict should be for the defendant.

The court refused to give the instructions as asked for, but instructed them that, in computing the time of the statute of limitations in this cause, the jury ought to exclude from the computation all that period of time between the seventh day of April, 1861, and twenty-seventh day of February, 1866, and if the jury believe from the evidence that the cause of action arose in 1862, as alleged in the declaration, then it is not barred by either of the statutes of limitations upon which issues have been joined; to which opinion of the court, refusing the instructions as asked for, and giving the instructions in lieu thereof, the defendant, by his counsel, excepts, and prays that this his bill of exceptions may be signed, sealed, and made a part of the record; which is done.

N. HARRISON. [SEAL.]

I, Lewis Callaway, clerk of Monroe County circuit court, do hereby certify that the foregoing is a copy of a bill of exceptions which was omitted in the making up of the transcript of the record in the cause of Philip Bowyer against Allen T. Caperton.

Teste:

LEWIS CALLAWAY, *Clerk.*

42 WEST VIRGINIA, *ss:*

At a supreme court of appeals held in the city of Wheeling, the 7th day of March, 1870—

ALLEN CAPERTON, PLAINTIFF IN ERROR, }
vs.
PHILIP BOWYER, DEFENDANT IN ERROR. }

Upon a writ of supersedeas to a judgment of the circuit court of Monroe County, rendered on the 25th day of July, 1867—

The court having maturely considered the transcript of the record of the judgment aforesaid, together with the arguments of counsel thereupon, is of opinion, for reasons stated in writing and filed with the record, that there is no error in said judgment; therefore it is considered by the court that the judgment aforesaid be affirmed, and that the defendant, in error, recover from the plaintiff in error, damages according to law, together with his costs, about his defense in this behalf expended.

And the court doth certify that, in the aforesaid judgment, there was drawn in question the validity of the statute of the State of West Virginia, passed March 1, 1865, entitled "An act in relation to the
43 statutes of limitation," on the ground that it was repugnant to the Constitution of the United States; and the decision of this the highest court of law and equity in this State, in which a decision in said suit could be had, was in favor of the validity of said statute.

I, the undersigned clerk of the supreme court of appeals of West Virginia, do certify that the foregoing is a true copy of the record and proceedings in the case of Allen T. Caperton, plaintiff in error, vs. Philip Bowyer, defendant in error, as the same remains in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, this eighth day of March, A. D 1870.

[SEAL.] SYLVANUS W. HALL, *Clerk.*

I, James H. Brown, presiding judge of the supreme court of appeals of West Virginia, do certify that the foregoing is in due form.

Given under my hand this 8th day of March, A. D. 1870.

J. H. BROWN.

44 (Indorsed:) Writ of error allowed on the within judgment, returnable to Dec. term, 1870.

S. P. CHASE,
Ch. Jus. U. States.

45 WEST VIRGINIA, *ss:*

At a supreme court of appeals, held in the city of Wheeling, on the 6th day of February, 1869—

ALLEN T. CAPERTON, PLAINTIFF IN ERROR,
vs.
PHILIP BOWYER, DEFENDANT IN ERROR.

Upon a writ of supersedeas to a judgment of the circuit court of Monroe County.

This day came the plaintiff in error, by Messrs. Nash, Lee, and Boggess, his counsel, and the defendant in error, by Messrs. Stanton & Allison, his counsel, and this cause was partly heard upon the transcript of the record of the judgment aforesaid, and the argument of counsel, and is continued until Monday next for a further hearing.

And at another day of said court, to wit, February 8th, 1869—

This day came again the parties by their counsel, and this cause was fully heard upon the transcript of the record of the judgment aforesaid and the argument of counsel, but because the court is not ad-
46 vised of its judgment to be given, time is taken to consider thereof.

And at a term of said court held on the 7th day of March, 1870—

ALLEN T. CAPERTON, PLAINTIFF IN ERROR,
vs.
PHILIP BOWYER, DEFENDANT IN ERROR.

Upon a writ of supersedeas to a judgment of the circuit court of Monroe County, rendered on the 25th day of July, 1867.

The court having maturely considered the transcript of the record of the judgment aforesaid, together with the arguments of counsel thereupon, is of opinion, for reasons stated in writing and filed with the record, that there is no error in said judgment. Therefore, it is considered by the court that the judgment aforesaid be affirmed, and that the defendant in error recover from the plaintiff in error damages, according to law, together with his costs about his defence in this
47 behalf expended.

And the court doth certify that in the aforesaid judgment there was drawn in question the validity of the statute of West Virginia, passed March 1st, 1865, entitled "An act in relation to the statutes of limitations," on the ground that it was repugnant to the Constitution of the United States, and the decision of this the highest court of law and equity in this State, in which a decision in said suit could be had, was in favor of the validity of said statute.

The opinion of the court referred to in the foregoing order is in the words and figures following:

48 *Opinion of court.*

CAPERTON
vs.
BOWYER.

This was a motion for a change of venue, upon the allegation that the defendant could not have a fair trial, because of prejudice against him.

In support of the motion are the affidavits of a number of witnesses taken without notice, stating substantially that, in the opinion of the affiants, the defendant could not have a fair trial by any jury likely to be selected in the county. And in opposition to the motion are the affidavits of a number of witnesses, taken also without notice, to the effect that, in their opinion, no such prejudice exists among the jurors or voters of the county as to prevent their doing justice to the defendant upon the evidence adduced in the cause.

The court, upon consideration of the affidavits and counter
49 affidavits filed, and the circumstances of the case, in a written opinion, declared that it could not come to the conclusion that impartial justice could not be done to the defendant by a jury of the county, especially as the court, in every instance, where applied to by the defendant, had directed a special jury to be empanneled under the 25th section, code of 1860, p. 691, and, in all such cases, subjected each juror to the sifting test propounded by sec. 21. And that the court had no reason, from the character of the verdicts already rendered against the defendant in other causes at that term or otherwise, to believe that he could not obtain a fair and impartial trial of this cause in the county, and that it would occasion great inconvenience, amounting almost to a denial of justice to the plaintiff, to send the case to another county
50 under the circumstances of the case, as *as* stated in the said opinion.

And the court overruled the motion for a change of venue.

To this ruling the defendant excepted as the same is assigned for error here.

In the case of Ingersol vs. Wilson, 2 W. Va., 59, and Att. vs. McHenry, idem, 73, the evidence was all on one side, and the fact not disputed, that a fair trial could not probably be had before a jury of the county. But in this case the evidence is conflicting, and the case one in which the opinion of the court is entitled to consideration.

There is no error in the refusal of the court to change the venue in this cause. And the verdict of the jury, upon the facts of the case, is moderate in amount, gives no indication of the prejudice alleged, but rather corroborates the opinion of the court in the premises.

The other points, relative to the alleged defense of belligerent
51 rights; the President's pardon to the defendant for complicity in the rebellion, and the alleged unconstitutionality of the act of March 4th, 1865, prohibiting the computation of the time of the war within the period of limitation of actions, and the question of pleading, &c., have all been determined and disposed of in the case of Caperton vs. Martin (infra.)

There is, however, another point raised in this case not made in the case against Martin, and that is the removal of the court to the Salt Sulphur, for the reason assigned in the order of court, that the court-house was then undergoing repairs, and was unfit to be occupied. The case came within the provision of the statute on the subject in the Code, 1860, and the objection to the removal was properly overruled.

The judgment, therefore, of the court below must be affirmed with costs and damages to the defendant in error.

52 I, the undersigned, clerk of the supreme court of appeals of West Virginia, do certify that the foregoing is a copy of the record and proceedings in the case of Allen T. Capertion, plaintiff in error, vs. Philip Bowyer, defendant in error.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court, at Charleston, the 18th day of October, A. D. 1870.

[SEAL.] SYLVANUS W. HALL, *Clerk.*

(Indorsement on cover:) No. 369. A. T. Caperton, plaintiff in error, vs. Philip Bowyer. West Virginia. Sup. c't of appeals. Filed 9th December, 1870.